IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 683 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA
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1.   Whether Reporters of Local Papers may be allowed
        to see the judgements?

2.   To be referred to the Reporter or not?

3.   Whether Their Lordships wish to see the fair copy
        of the judgement?

4.   Whether this case involves a substantial question
        of law as to the interpretation of the Constitution
        of India, 1950 of any Order made thereunder?

5.   Whether it is to be circulated to the Civil Judge?

NATUBHAI DAYABHAI KAVAIYA
Versus
CHIMANLAL GOVINDBHAI RATHOD

Appearance:
     MR SANDEEP N BHATT for Petitioner
     M/S THAKKAR ASSOC. for Respondent No. 1
     Mr.S.T.Mehta ADDL.PUBLIC PROSECUTOR for Respondent No. 2

CORAM : MR.JUSTICE N.J.PANDYA
Date of decision: 19/09/97

C.A.V. JUDGEMENT

  The petitioner is the original-accused no.2 of
M.Case No.2 of 1997 of the Court of JMFC, Jam Khambhalia,
District Jamnagar.   The case against respondent no.1 is
that one Navinbhai Kevaiya had conceived of a new design
of plates for manufacturing rolling shutters and had got

it registered under the provisions of the Designs Act 1911 and thereafter had assigned the same to the complainant who is the proprietor of Messrs Ecotech Enterprise and the original accused no.2 being the elder brother of said Navinbhai and being in know of the design and the said Navinbhai has actively assisted accused no.1 in copying the same illegally and thereby committing a piracy, which according to the complainant, amounts to an offence under the provisions of then Copyright Act, 1956 as also Section 420 of the Indian Penal Code.

2. It may be recalled that on receipt of the complaint on or about 10th February 1997, what has been ordered by the learned Judgte is an inquiry under Sec.156(3) of the Criminal Procedure Code.

3. It is at this stage that the petitioner has come before the Court requesting to quash the complaint and set aside the proceedings of M.Case No.2 of 1997. The main thrust of the argument on behalf of the petitioner submitted by L.A. Mr.S.N.Bhatt is that, even if the design is registered under the said 1911 Act, it is not a copyright for the purpose of Copyright Act, 1957 as laid down in Sec.15 of the said Copyright Act. Elaborating the submission further, Mr.Bhatt submitted that offence being creation of a Statute and when the alleged offence is said to be under the Copyright Act, with reference to a registered design under the said 1911 Act, if the said registered design is excluded by the very Act which creates the offence, there is no question of even inquiry about the alleged illegal activity.

4. Had this been the only allegation , I would have readily agreed with Shri Bhatt. In support of the submission, he has relied on 17 GLR 338 where Justice M.B.Thakkar, as he then was, sitting singly, after considering Section 2(c) and Sec.13 of the Copyright Act has held that, Copyright Act does not apply to commercial and industrial designs.

5. Shri Thakkar, the learned Sr.Counsel submitted that as held in AIR 1981, Allahabad, page 200, these are not the only two enactments which are to be consdiered as common law rights as well in favour of a person who holds either a right in a design or a right in a work referred to as "artistic work" in the Copyright Act. No doubt, the said decision of the Allahabad High Court relates to a civil suit,but so far as the complaint is concerned, it is not confined only to the provisoins of the Copyright Act, but refers to the Indian Penal Code as well. The complaint thus, being the one where reliance is placed on

general law as well, at inquiry stage, it would not be
proper to interfere with the proceedings. As and when
the report is filed by the police and if at all the
report is against the present petitioner, it shall be
open for him to pray for appropriate remedy before the
trial Court in form of dropping the proceedings etc.   In
my opinion, to intefere at this stage would be premature.
The petition is therefore, dismissed.   Rule is
discharged.

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